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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,537	11/20/2003	Michael Jackson Hosey	50065.00011	3450

7590 03/13/2008  
Stuart Whittington, Esq.  
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EXAMINER
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HINZE, LEO T

ART UNIT	PAPER NUMBER
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2854

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03/13/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/719,537	<b>Applicant(s)</b> HOSEY, MICHAEL JACKSON	
	<b>Examiner</b> LEO T. HINZE	<b>Art Unit</b> 2854	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02/05/2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 05 February 2008 has been entered.

### ***Claim Objections***

2. Claim 27 is objected to because of the following informalities: it appears that words are missing between "25" and "multi-function" in line 1.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the

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United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 23 is rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al., US 2004/0203501 A1 (hereinafter Johnson).

Johnson teaches a multi-function display device comprising: a casing (180, Fig. 13) having a hinge tab extending there from (155, Fig. 13); a multi-function digital display secured by the casing (45, Fig. 1); a carabineer clip having a hinge recess (154, Fig. 13); and a post to secure the casing hinge tab to the carabineer clip hinge recess in a manner that the carabineer clip may at least partially rotate about an axis with respect to the casing, wherein the hinge tab and hinge recess are formed to maintain the multi-function digital display in a substantially upright position when the carabineer clip is placed on a substantially horizontal surface ("latch can be swung outwardly away from the housing 180 ... at generally right angles to the housing 180 to support the construction 105 in a generally upright configuration when resting on a horizontal supporting surface," ¶0043).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Sekiguchi, US 6,751,164 B1 (hereinafter Sekiguchi).

a. Regarding claim 24:

Johnson teaches the multi-function display device of claim 23 as discussed in the rejection of claim 23 above. Johnson also teaches that the device can be a clock ("the construction according to another embodiment of the invention may be used as a hand-held device such as a ...clock," ¶ 0023).

Johnson does not teach wherein the casing is waterproof.

Sekiguchi teaches a clock having a casing (Fig. 1) that is water proof ("a watch used for diving," col. 5, l. 35).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Johnson to be water proof as taught by Sekiguchi, because one having ordinary skill in the art could easily combine the known prior art elements and predictably obtain a water proof watch, and one having ordinary skill in the art would recognize the benefits of a water proof watch, such as the ability to wash one's hands while wearing the watch without having to worry about the water damaging the watch.

b. Regarding claim 25:

Johnson teaches the multi-function display device of claim 23 as discussed in the rejection of claim 23 above. Johnson also teaches that the device can be a clock ("the construction according to another embodiment of the invention may be used as a hand-

held device such as a "...clock," ¶ 0023). Johnson also teaches at least two control buttons (21, Fig. 1) extending from a periphery of the casing (14, Fig. 1).

Johnson does not teach wherein at least one of the two control buttons is for changing between various modes of the multi-function digital display.

Sekiguchi teaches a watch having at least two control buttons (3, Fig. 1) extending from a periphery of the casing (6, Fig. 1), and wherein at least one of the two control buttons is for changing between various modes of the multi-function digital display (col. 7, l. 65 – col. 8, l. 4).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Johnson wherein at least one of the two control buttons is for changing between various modes of the multi-function digital display as taught by Sekiguchi, because one having ordinary skill in the art could easily combine the known prior art elements and predictably obtain a clock with multiple modes, and one having ordinary skill in the art would recognize that buttons are advantageous in changing modes.

c. Regarding claim 26, the combination of Johnson and Sekiguchi teaches the multi-function display of claim 25 as discussed in the rejection of claim 25 above. The combination of Johnson and Sekiguchi also teaches wherein the various modes comprise a time mode (time displayed by hands 42 and 43, Fig. 1), an altimeter mode ("altimeter," col. 4, l. 10), a compass mode ("compass," col. 16, ll. 36-37), a barometer mode ("barometer," col. 4, l. 10), an alarm mode ("alarm," col. 14, l. 63) and a chronograph mode ("chronograph," col. 14, l. 63).

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d. Regarding claim 27, the combination of Johnson and Sekiguchi teaches the multi-function display of claim 25 as discussed in the rejection of claim 25 above. The combination of Johnson and Sekiguchi also teaches multi-function digital display includes a temperature sensor ("displays 'TEMP' for expressing temperature," col. 4, ll. 6-7).

e. Regarding claim 28, the combination of Johnson and Sekiguchi teaches the multi-function display of claim 25 as discussed in the rejection of claim 25 above. The combination of Johnson and Sekiguchi also teaches wherein one of the two control buttons causes a backlight to illuminate in the multi-function digital display ("Light", Fig. 1).

7. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

Johnson teaches a display device comprising: a casing (180, Fig. 13) having a substantially circular outer periphery, at least two control buttons protruding from casing (21, Fig. 1) and a battery compartment on a bottom side of the casing (156, Fig. 13); a multi-function electronic module secured by the casing the electronic module having a digital display viewable from a top side of the casing (45, Fig. 1); a carabineer clip (154, Fig. 13); and a hinge section to secure the carabineer clip to the casing such that the carabineer clip may rotate with respect to the casing, wherein the hinge section, casing and carabineer clip are formed in a manner to maintain the digital display in nearly a vertical position when the carabineer clip is placed on a substantially horizontal surface ("latch can be swung outwardly away from the housing 180 ... at generally right angles

to the housing 180 to support the construction 105 in a generally upright configuration when resting on a horizontal supporting surface," ¶0043).

Johnson does not teach at least two control buttons protruding from the circular outer periphery.

It has been held that mere rearrangement of parts is not sufficient to patentably distinguish an invention over the prior art. See MPEP §2144.04(VI)(C).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Johnson to rearrange the buttons so that some were located on the circular outer periphery of the device, because a person having ordinary skill in the art would know that the location of the buttons would not affect the function of the device, but may advantageously enhance the usability and ergonomics of the device.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leo T. Hinze whose telephone number is 571.272.2864. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on 571.272.2258. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Judy Nguyen/

Supervisory Patent Examiner, Art Unit 2854

Leo T. Hinze  
Patent Examiner  
AU 2854  
26 February 2008